

ARTICLE 12 - OTHER CONDITIONS OR SERVICES AIA B151-1997

12.1 AIA Document B151-1997, "Abbreviated Standard Form of Agreement Between Owner and Architect," is hereby modified by addition to, change of, and/or deletion from existing clauses and/or insertion of additional clauses as follows:

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

1.2 *Add the following sentence to Paragraph 1.2:*

The A/E's detailed schedule shall be submitted within fifteen (15) days of award of this contract. The A/E's schedule shall be consistent with and support the Project Milestone schedule as defined in paragraph 12.2.

1.3 *Add the following to Paragraph 1.3:*

The designated representative shall not be changed without the Agency's written consent, which consent shall not be unreasonably withheld.

1.3.1 The A/E shall define the project organization as required in Paragraph 12.3. The consultants presented by the A/E as part of the selection process and approved by the Agency shall be the consultants used for the Project and shall be listed by name and discipline in Paragraph 12.3. The A/E shall not substitute any consultant without the consent of the Agency and the State Engineer, which consent shall not be unreasonably withheld.

1.3.2 Key personnel shall be listed as required in Paragraph 12.4. The A/E shall not substitute any Key Personnel without the consent of the Agency and the State Engineer, which consent shall not be unreasonably withheld.

1.4 *Delete Paragraph 1.4 and substitute the following:*

1.4 The services covered by this Agreement are subject to the time limitations contained in Paragraph 12.2

1.4.1 The time of the contract shall begin at A/E Contract Award and shall end with the A/E's written report submitted at the end of the Contractor's Warranty Period as defined in the Contract for Construction.

ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 *Delete Paragraph 2.1 and substitute the following:*

2.1 DEFINITION

The A/E's Basic Services consist of those described in Paragraphs 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal civil, structural, mechanical, fire protection and electrical engineering services. For the purposes of this Agreement, "normal services" shall be those services reasonably required to provide complete design and construction period services for the Project in accordance with the requirements of the Manual, except as modified herein.

2.1.1 In addition to the services required by Paragraphs 2.2 through 2.6, the A/E's Basic Services shall include the following in the negotiated Basic Services fee:

- .1** Consistent with Paragraph 4.9, the A/E shall review and evaluate the information provided by the Agency and advise the Agency of any additional information required by the A/E for completion of the Project.
- .2** The A/E shall investigate existing conditions or existing facilities.
- .3** The A/E shall provide a preliminary seismic evaluation of the structures in accordance with Chapter 5 of the Manual.
- .4** The A/E shall provide Estimates of Construction Cost and obtain the Agency's written approval of the cost estimate at each phase of design.
- .5** The A/E shall provide the Agency with Record Plans, as required in Clause 2.6.14.3, showing any significant changes in the work made during construction based on marked-up prints, plans and other data furnished by the Contractor to the A/E.

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- .6 The A/E shall prepare, on behalf of the Agency, applications and supporting documentation for all design-related and land-use permits, variances and approvals required by state and local governmental authorities having jurisdiction over the Project (e.g., grading, utilities, zoning and encroachment). The A/E shall revise applications and supporting documentation as required to resolve comments received from such governmental authorities, provided however that:
 - (1) The A/E's appearance as an expert, as well as the preparation of special drawings, visual aids and other materials and design work prepared solely for an appearance before local zoning boards or planning commissions shall be considered an Additional Service; and,
 - (2) Specialized permits, such as, but not limited to, permits required by Federal agencies are not included within the scope of Basic Services unless such permits are listed in Articles 12 or 13.
- .7 The A/E shall comply with the State Flood Plain Development requirements in accordance with State Law and the Manual.
- .8 The A/E shall comply with the State's requirements for telephone, data and communications equipment rooms as required by the Office of Information Resources.
- .9 The A/E shall comply with the energy conservation requirements of State Law and the Manual.
- .10 The A/E shall provide the local Building Official a complete set of Construction Documents to review and meet with the local officials to familiarize them with the proposed project.
- .11 The A/E shall meet with the local Fire Official to review proposed fire protection systems, provide the local Fire Official and the regional Deputy State Fire Marshal with a set of Construction Documents each. The A/E shall notify the local Fire Official and the regional Deputy State Fire Marshal of the time and place the fire protection and detection system(s) are to be tested.
- .12 The A/E shall provide the Agency and the OSE a letter of approval of fire protection systems shop drawings from the State Fire Marshal.
- .13 The A/E's mechanical engineer of record shall attend the testing of the fire protection and detection system(s) and provide the Agency and OSE the following:
 - (1) The installer's Certificate of Compliance with code requirements for installation and testing.
 - (2) The Fire Marshal's Inspection Report
 - (3) The Record of Training of users for Systems Operation.
- .14 The A/E shall prepare and distribute conference memoranda, meeting minutes, summaries of telephone conversations, documentation of site visits and inspection reports as required by the Agency to maintain a comprehensive record of the Project. The State's Project Number and Name shall be shown on all documents.
- .15 The A/E shall provide normal A/E services. Civil Engineering services, other than normal Civil Engineering, should be defined by the A/E and the agency for the project. Any services beyond the defined scope may be considered additional services. See Article 3.

2.2 SCHEMATIC DESIGN PHASE

2.2.6 *Add Subparagraph 2.2.6 as follows:*

2.2.6 The A/E shall submit, to the Agency and the OSE for review and approval, properly completed sets of Schematic Design Documents, in the number and form requested by the Agency and OSE Project Managers, including the SE-271, "Design/Construction Documents Transmittal Form", and the Estimate of Construction Cost.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 *Add the following Clause to Subparagraph 2.3. 1:*

- .1 Design Development Documents shall incorporate the accepted resolution of all Agency and OSE comments on the Schematic Design Document submittal.

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2.3.2 *Delete Subparagraph 2.3.2 and substitute the following:*

2.3.2 The A/E shall submit, to the Agency and the OSE for review and approval, properly completed Design Development Documents, in the number and form requested, including the SE-271, "Design/Construction Documents Transmittal Form", and the Revised Estimate of Construction Cost.

2.4 CONSTRUCTION DOCUMENTS PHASE**2.4.1** *Add the following to Subparagraph 2.4.1:*

.1 The Construction Documents shall incorporate the final resolution of all review comments from the Agency, and OSE and other authorities having jurisdiction on the Design Development Document Submittal. The Construction Documents shall comply with the requirements of the Manual and shall be 100 percent complete for OSE Review.

2.4.2 *Delete Subparagraph 2.4.2 and substitute the following:*

2.4.2 The A/E shall coordinate with the Agency in the preparation and issuance of the Bid Documents.

2.4.3 *Delete Subparagraph 2.4.3 and substitute the following:*

2.4.3 The A/E shall advise the Agency of any adjustments to the Final Estimate of Construction Cost and submit a revised estimate to the Agency for approval. If the revised estimate indicates that the Final Estimate of Construction Cost, through no fault or direction of the Agency, exceeds the Project Construction Budget, the A/E shall discuss with and provide to the Agency, at no additional cost, recommendations and document revisions which reduce the Final Estimate of Construction Cost to within the Project Construction Budget. However, the A/E shall not be required to perform such additional services at no cost to the Agency if the unfavorable estimate is the result of conditions beyond the A/E's reasonable control.

2.4.4 *Delete Subparagraph 2.4.4 and substitute the following:*

2.4.4 The A/E shall, on behalf of the Agency, prepare applications and submittals for the Agency's use in obtaining all normal design-related permits and approvals required by governmental authorities having jurisdiction over the project.

2.4.5 *Add Subparagraph 2.4.5 as follows:*

2.4.5 The A/E shall submit, to the Agency and the OSE for review and approval, properly completed Construction Documents, in the number and form requested, including the SE-271, "Design/Construction Documents Transmittal Form", and the Revised Estimate of Construction Cost, to the Agency and the OSE for review and approval. The Agency shall submit a copy of the Agency's approval of the Final Estimate of Construction Cost to the OSE.

2.4.6 *Add Subparagraph 2.4.6 as follows:*

2.4.6 The review and approval of the Construction Documents by the Agency and the OSE shall not relieve the A/E of its responsibility for compliance with the requirements of the Manual, or with applicable statutes, regulations and codes, or for design deficiencies, omissions or errors.

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2.5 BIDDING OR NEGOTIATION PHASE

Delete Paragraph 2.5 in its entirety and substitute the following:

2.5 BIDDING OR NEGOTIATION PHASE

The Architect, following the Owner's approval of the Construction Documents and estimate of Construction Cost, shall assist the owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

2.5.1 Prior to advertisement for bids, the A/E shall submit to the Agency and the OSE a record copy of the Bidding Documents, which are to be issued to prospective bidders. The submittal to the Agency and the OSE shall include the SE-271, "Design/Construction Documents Transmittal Form" and the Final Estimate of Construction Cost signed by the Agency.

2.5.2 The A/E shall evaluate substitutions proposed by Bidders and make subsequent revisions to Bidding Documents by Addenda.

2.5.3 The A/E shall attend the Pre-Bid Conference and the Bid Opening and shall assist the Agency in obtaining bids and awarding and preparing construction contracts.

2.5.4 If the lowest bona fide bid exceeds the Agency's Construction Budget by less than 5%, and the Agency elects to award the Contract, the A/E shall, without additional charge to the Agency, assist in negotiations to reduce the bid amount to the level requested by the Agency, but not more than 10% below the Agency's established Project Construction Budget.

2.5.5 If the lowest bona fide bid exceeds the Final Estimate of Construction Cost by more than 5% and the Agency elects to continue the Project, the A/E shall, without additional charge to the Agency, modify the Contract Documents as necessary to bring the Project within the Project Construction Budget. The A/E shall be responsible for all its costs associated with the redesign and rebidding of the Project, including the reproduction of revised documents and fees for any new or revised permits based on the revised plans. However, the A/E shall not be required to perform such additional services at no cost to the Agency if the unfavorable bids are the result of conditions beyond the A/E's reasonable control.

2.5.6 If the Agency elects to terminate the Project, then this Contract is terminated in accordance with Article 8.

2.6 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 *Delete Subparagraph 2.6.1 and insert the following:*

2.6.1 The A/E's responsibility to provide Basic Services for the Construction Phase under this Contract begins with the issuance of the SE-390, "Notice To Proceed", and ends twenty-one (21) days after the A/E certifies the Contractor's final Application for Payment, except that the A/E's Basic Services shall include the Warranty Inspection as described in Paragraph 2.6.19.

2.6.2 *Change the first sentence of Subparagraph 2.6.2 to read:*

The A/E shall provide administration of the Contract for Construction as set forth below and in the General Conditions, unless otherwise provided in this Agreement. The A/E shall perform all duties and obligations that are assigned to the A/E in the General Conditions unless such duties or obligations on the part of the A/E are expressly waived in this Agreement.

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2.6.3 *Delete Subparagraph 2.6.3 and insert the following:*

2.6.3 Duties, responsibilities and limitations of authority of the A/E as set forth in the Contract Documents and General Conditions shall not be restricted, modified or extended without written agreement of the Agency and A/E and without written notice to all concerned parties.

2.6.5 *Add the following Clauses to Subparagraph 2.6.5:*

- .1 The A/E may vary periodic visits to the work, but shall average not less than one visit per week during the course of construction or as otherwise agreed by the Agency and A/E in Article 12.
- .2 Site visits shall be made by representatives of the A/E and its consultants who are knowledgeable of the Project requirements and competent in each discipline having work in current progress. These representatives shall visit the site at intervals to assure conformance with the design shown in the Contract Documents and to observe, as experienced and qualified design professionals, the progress and quality of the various aspects of the Contractor's Work
- .3 The A/E shall submit to the Agency, at least once a month, a written report of its and its consultants' periodic visits, its findings and the status of the Project or as otherwise agreed by the Agency and A/E in Article 12.

2.6.6 *Add the following Clause to Subparagraph 2.6.6:*

- .1 Based on the A/E's independent evaluation of work-in-place, should the Contractor fall behind, in the A/E's opinion, in the latest approved construction schedule by more than four (4) weeks, the A/E shall so notify the OSE, the Agency and the Contractor in writing.

2.6.13 *Delete Subparagraph 2.6.13 and insert the following:*

2.6.13 The A/E shall prepare Change Orders and Construction Change Directives, with supporting technical and cost documentation and data for the Agency's approval.

- .1 For Construction Change Directives only, when the Contractor does not provide properly itemized cost information in accordance with Article 7 of the A201, the A/E shall, for the Agency's information and as an initial basis for establishing the upper limit of compensation to the Contractor, provide the itemization and shall use the labor, material and equipment unit costs as listed in the most current issue of the "Means Construction Cost Data" series of cost guides, adjusted for local cost conditions. The A/E's effort required to prepare the cost itemization shall be considered as an Additional Service.
- .2 When the A/E deems it necessary, it is only authorized to direct minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.

2.6.14 *Add the words "...and its Consultants..." after "The Architect..." in Subparagraph 2.6.14.*

Add the following Clauses to Subparagraph 2.6.14:

- .1 The A/E, upon notification by the Contractor, shall coordinate with the Agency and the OSE the dates of the Substantial Completion and Final Completion Inspections.
- .2 The A/E shall provide one Substantial Completion Inspection, and one Final Completion Inspection. Where projects have been designed for phased completion, the A/E shall provide a Substantial Completion Inspection and Final Completion Inspection for each phase of the Project. If additional inspections are required, payment to the A/E shall be in accordance with Paragraph 11.2 and charged to the Contractor.
- .3 The A/E shall prepare, from Contractor supplied-information, and provide to the Agency a set of reproducible Record Plans showing all significant changes in the work made during construction as required by the Manual. Plans shall be stamped as "Record Plans" This set of reproducible documents shall be in addition to computer media plans (diskettes, tapes, etc.) that may be required in Paragraph 12.5.

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2.6.15 *Add the following sentence to Subparagraph 2.6.15:*

Unless otherwise agreed upon by the parties, the A/E's decisions on all requests shall be rendered within fourteen (14) days of receipt by the A/E.

2.6.17 *Add the following sentence to Subparagraph 2.6.17:*

The A/E's initial decisions on all claims, disputes or other matters in question between the Agency and Contractor shall be rendered within fourteen (14) days of receipt by the A/E, unless otherwise agreed.

2.6.18 *Delete Subparagraph 2.6.18 in its entirety.***2.6.19** *Insert Subparagraph 2.6.19:*

2.6.19 WARRANTY INSPECTION. As part of the Basic Services provided by the A/E, during the tenth (10th) month after the Date(s) of Substantial Completion, the A/E shall visit the Project to review the Work and shall prepare a report to be issued to the Agency, the OSE and, at the Agency's direction, to the Contractor, indicating outstanding work to be corrected and warranty issues to be addressed by the Contractor. The A/E shall, as an Additional Service, assist the Agency in taking necessary action to see that the deficiencies are corrected.

ARTICLE 3 ADDITIONAL SERVICES**3.1 GENERAL****3.1.1** *Delete Subparagraph 3.1.1 and substitute the following:*

3.1.1 Additional services shall be defined as services required for the Project that are not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural and engineering practice. The services described under paragraphs 3.2, 3.3 and 3.4 shall only be provided if authorized by the Agency.

3.1.2 *Add the following Subparagraph:*

3.1.2 The A/E shall provide, upon request by the Agency, the services of consultants for the Project other than those provided as a part of Basic Services.

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES**3.2.2** *Delete Subparagraph 3.2.2 and substitute the following:*

3.2.2 Project Representatives shall be selected, employed and directed by the A/E after approval by the Agency. The duties, responsibilities and limitations of authority of Project Representatives shall be determined by the Agency as required by the Project.

3.4 OPTIONAL ADDITIONAL SERVICES**3.4.1** *Delete Subparagraph 3.4.1 in its entirety and substitute the following:*

3.4.1 Providing analysis of the owner's needs which may go beyond the services provided in the A/E's basic services as described in Subparagraph 2.2.1 and 2.2.3 and shall include:

3.4.1.1 Pre-design services

3.4.1.2 Programming services

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3.4.16 *Delete Subparagraph 3.4.16 in its entirety and substitute the following:*

3.4.16 Providing assistance and services to the agency, beyond basic services, for taking additional action to determine deficiencies are corrected at the time of Warranty Inspection and Close-out of the Project.

3.4.19 *Delete Subparagraph 3.4.19 in its entirety and substitute the following:*

3.4.19 Providing services of consultant for other than architectural, structural, mechanical, electrical and normal civil engineering (as defined and negotiated by the Agency and the A/E per paragraph 2.1.1.15) of the project as part of the Basic Services.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.2 *Add the following to Paragraph 4.2:*

4.2.1 The Agency shall review the documents and the Estimate of Construction Cost for each phase (Schematic, Design Development, Construction and Bid Documents) and shall submit a copy of its written approval to the A/E and OSE.

4.9 *Add the following to Paragraph 4.9:*

Such reliance requires that the A/E shall review the information provided by the Agency and shall give prompt and timely notice to the Agency of any apparent deficiencies or inconsistencies in the information furnished by the Agency.

4.10 *Add the following to Paragraph 4. 10:*

This includes both the work of the A/E and the Contract Documents. Such notice shall set forth with as much specificity as possible the actions required of the A/E to remedy the fault or defect.

ARTICLE 5 ESTIMATE OF CONSTRUCTION COST**5.1 DEFINITION**

5.1.1 *Delete Subparagraph 5. 1.1 and substitute the following:*

5.1.1 The Estimate of Construction Cost and Construction Budget shall as defined in Paragraph 12.9.

5.1.2 *Delete Subparagraph 5.1.2 and substitute the following:*

5.1.2 The Estimate of Construction Cost and Construction Budget shall include the elements of cost, including appropriate contingencies, as required by the Project. The level of detail for any estimate prepared by the A/E shall be commensurate with the degree of design completion and shall be correlated with the A/E's drawings and specifications.

5.2 RESPONSIBILITY FOR THE ESTIMATE OF CONSTRUCTION COST

5.2.1 *Change the first sentence of Subparagraph 5.2.1 to read as follows:*

5.2.1 Evaluations of the Agency's Construction Budget and all Estimates of Construction Cost and Construction Time prepared by the A/E represent the A/E's best judgment as a design professional familiar with the construction industry.

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5.2.2 *Delete Subparagraph 5.2.2 in its entirety and substitute the following:*

5.2.2 Fixed Limit of Construction Cost shall be the approved Estimate of Construction Cost included in Subparagraph 2.4.5. The Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate Bids to adjust the Construction Cost to the fixed limit. Fixed limits shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

5.2.3 *Delete Subparagraph 5.2.3 and substitute the following:*

5.2.3 If the Bidding Phase has not commenced within ninety (90) days after the Agency and OSE have approved the Bid Documents, the Estimate of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of approval of the Bid Documents and the date the Project is advertised.

5.2.4 *Delete Subparagraph 5.2.4 and substitute the following:*

5.2.4 If the Estimate of Construction Cost is exceeded by the lowest bona fide bid, the Agency shall:

- .1** abandon the project and terminate the contract in accordance with Article 8; or,
- .2** obtain an increase in Project funding; or,
- .3** authorize negotiations with the lowest bona fide bidder; or
- .4** cooperate with the A/E in revising the Project scope for the purpose of rebidding.

5.2.5 *Delete Subparagraph 5.2.5 and substitute the following:*

5.2.5 If the Agency chooses to proceed under Clause 5.2.4.4, the A/E shall modify the Bidding Documents as necessary to permit rebidding. The modification, including the costs of additional printing, advertising and distribution of the revised Bidding Documents without cost to the Agency shall be the limit of the A/E's responsibility under this Subparagraph 5.2.5, unless otherwise provided in this Agreement. The A/E shall provide these services at no cost to the Agency, provided, however, the A/E shall not be required to perform such additional services at no cost to the Agency if the unfavorable estimate is the result of conditions beyond the A/E's reasonable control. The A/E shall be entitled to compensation in accordance with this Agreement for all services acceptably performed whether or not the Construction Phase is commenced.

ARTICLE 6 USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

6.2 *Delete the first sentence of Paragraph 6.2 and replace with the following:*

6.2 Upon execution of the Agreement, the A/E grants to the Agency a nonexclusive license to reproduce the A/E's Instruments of Service solely for the purposes of constructing, using and maintaining the Project, and for expanding the Project, correcting any deficiencies, or making any renovations, modifications or repairs to the Project.

Delete all of Paragraph 6.2 after the second sentence.

6.3 *Delete the phrase "... for future additions or alterations to this Project or ..." in the next-to-last-sentence of Paragraph 6.3.*

6.4 *Delete Paragraph 6.4 in its entirety.*

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ARTICLE 7 DISPUTE RESOLUTION

Delete Article 7 in its entirety and substitute the following:

ARTICLE 7 CONTRACT CONTROVERSY RESOLUTION

7.1 A/E consents to be governed by §11-35-4230 of the SC Code of Laws, as amended, and agrees that §11-35-4230 applies to and governs the Agreement. A/E waives any objection it may have now or hereafter to the administrative process required by §11-35-4230. To the extent that §11-35-4230, by its own terms, does not govern a claim or controversy arising out of or relating to the Agreement, A/E agrees that any suit, action or proceeding arising out of or relating to the Agreement shall be instituted and maintained only in a state or federal court located in Richland County, State of South Carolina. Notwithstanding any other agreement between A/E and the State, the Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, and any suit, action or proceeding arising out of or relating to the Agreement shall be governed by the laws of the State of South Carolina. A/E agrees that any act by the State regarding the Agreement is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the phrase, "the State" includes any governmental entity transacting business with the A/E pursuant to the Agreement and the South Carolina Budget & Control Board.

7.2 CLAIMS FOR LISTED DAMAGES

7.2.1 Waiver of Claims Between A/E and Agency. Notwithstanding any other provision of the Agreement, but subject to a duty of good faith and fair dealing, the A/E and Agency waive Listed Damages for claims, disputes or other matters in question arising out of or relating to this Agreement. The Listed Damages are damages incurred for principal office expenses and overhead (including, but not limited to, the compensation of personnel stationed there, rent, utilities, and office equipment), for losses of financing, business and reputation, for loss of profit other than anticipated profits arising directly from the Work, and for attorney's fees, insurance, and interest (excluding post-judgment).

7.2.2 Waiver of A/E Claims Against the Contractor. Notwithstanding any other provision of this Agreement, but subject to a duty of good faith and fair dealing, the A/E waives all claims against both the Contractor and any of the Contractor's subcontractors (at any tier) for Listed Damages arising out of or relating to this Contract. The Listed Damages are damages incurred for principal office expenses and overhead (including, but not limited to, the compensation of personnel stationed there, rent, utilities, and office equipment), for losses of financing, business and reputation, for loss of profit other than anticipated profits arising directly from the Work, and for attorney's fees, insurance, and interest (excluding post-judgment).

ARTICLE 8 TERMINATION OR SUSPENSION

8.1 *Change the second sentence in Paragraph 8.1 to read as follows:*

If the A/E elects to suspend services, prior to suspension of services, the A/E shall give written notice to the Agency. Unless payment in full for undisputed amounts is received by the A/E within twenty-one (21) days of the date of receipt by the Agency of the written notice, the suspension shall take effect without further notice.

Change the next-to-last sentence to read as follows:

Before resuming services following a suspension for reasons of nonpayment, the A/E shall be paid all undisputed sums due prior to the suspension and any direct expenses incurred in the interruption and resumption of the A/E's services.

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8.2 *Delete Paragraph 8.2 and substitute the following:*

8.2 If the Project is suspended by the Agency for any reason for more than thirty (30) consecutive days, the A/E shall be compensated for acceptable services performed prior to the notice of such suspension.

8.2.1 If the Project is resumed after an interruption of more than thirty (30) but less than one hundred eighty (180) days, the A/E's time schedules shall be equitably adjusted.

8.2.2 If the Project is resumed after an interruption of one hundred eighty (180) days or more, the A/E's compensation shall be equitably adjusted to provide for expenses incurred in resuming the A/E's services. The A/E's fees for the remaining services and the time schedules shall be equitably adjusted.

8.3 *In Paragraph 8.3, change "...90 consecutive days..." to "...one hundred eighty (180) consecutive days..."*

Add the following Subparagraph:

8.3.1 This Contract may be terminated by the Agency with not less than seven (7) day's written notice to the A/E that the Project is permanently abandoned.

8.4 *In Paragraph 8.4 change "...seven..." to "...twenty-one (21)..." and add the following:*

The Notice of Termination may give the other party a stated period of time within which to remedy its breach of contract, provided such time allowed for remedy shall be no less than thirty (30) days and no more than sixty (60) days from the receipt of the notice of termination. This notice shall specify the initiating party's reason(s) for the termination and shall state with specificity the means by which the other party may cure the asserted grievance.

8.4.1 If termination is the fault of the A/E, compensation shall be negotiated.

8.5 *In Paragraph 8.5 change "...seven ..." to "...twenty-one (21)..."*

8.6 *Delete Paragraph 8.6 and substitute the following:*

8.6 Payment for contract termination not the fault of the A/E shall be made in proportion to acceptable services performed prior to the notice of termination. When the basis of compensation is a percentage of construction cost as established in Paragraph 11.2; payment shall be based on the most recent Agency Construction Budget. In addition, the A/E shall be compensated for all Reimbursable Expenses incurred prior to the notice of termination in accordance with Paragraph 11.3.

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 *Delete Paragraph 9.1 in its entirety.*

9.2 *Delete Paragraph 9.2 and substitute the following:*

9.2 Unless otherwise stated, terms in the Agreement shall have the same meaning as those in the 1997 edition of the AIA document A201, as supplemented.

9.3 *Delete Paragraph 9.3 and substitute the following:*

9.3 See §11-35-4230 of the SC Code of Laws, 1976, as amended.

9.11 *Add the following Subparagraph 9.11:*

9.11 Any changes to the scope of work, Article 11 or Article 12 shall be requested on the SE-260, "Professional Services Contract Amendment Request".

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9.12 *Add the following Subparagraph 9.12:*

All documents, transmittals, products and plans shall be identified with the Agency name and the state project name and number.

ARTICLE 10 PAYMENTS TO THE A/E

Delete Article 10 in its entirety and substitute the following:

10.1 GENERAL

10.1.1 Compensation as described in Article 11 shall not be exceeded without prior written approval by the Agency and if required, by the OSE.

10.1.2 The hourly rates for each classification and/or category of employee shall include all expenses related to the individual including overhead and profit. The A/E shall provide justification of any hourly rate when requested by the Agency or the OSE.

10.1.3 The rates and multiples set forth in Paragraphs 11.2 and 11.3 shall be the rates and multiples used for the duration of the Contract, provided, however, that the rates and multiples may be adjusted, with Agency approval.

10.1.4 Invoices for services and reimbursable expenses shall be submitted at the completion of phases or monthly with documentation to substantiate all Additional Services and Reimbursable Expenses. Each invoice shall be project specific.

10.1.5 Progress payments shall be made by the Agency to the A/E on undisputed amounts within twenty- one (21) days of receipt of the A/E's invoice. The A/E shall make progress payments to the consultants within seven (7) days of receipt by the A/E of each payment from the Agency.

10.1.6 The A/E shall maintain records of Reimbursable Expenses and Additional Services Expenses, which shall be available to the Agency or the Agency's authorized representative at mutually convenient times for audit.

10.1.7 Responsibility for costs of errors and omissions by the A/E in the Contract Documents that result in Change Order(s) shall be determined in accordance with Chapter 4 of the Manual.

10.1.8 No deductions shall be made from the A/E's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work, other than those for which the Agency has reasonable cause, consistent with §29-6-40 of the SC Code of Laws, as amended, to determine A/E to be liable, provided that due notice to the A/E has been given pursuant to Paragraph 4.10.

10.2 PROJECT EXPENSES

10.2 NOTE: THE AGENCY HAS THE OPTION TO CHOOSE REIMBURSABLE EXPENSES, A LUMP SUM EXPENSE OR COMBINATIONS AS NECESSARY IN THE BEST INTEREST OF THE AGENCY.

10.2.1 REIMBURSABLE EXPENSES are actual expenses incurred by the A/E in the interest of the Project. Reimbursable expenses shall not exceed the amount indicated in Paragraph 11.3.1.1 without prior approval by the Agency in the form of an amendment to the Agreement.

10.2.2 A LUMP SUM EXPENSE is a negotiated sum of estimated project expenses that may be incurred by the A/E during the duration of the A/E contract. A Lump Sum Expense is an amount negotiated between the agency and A/E in place of reimbursable expenses. A Lump Sum Expense may include but are not limited to the following:

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10.2.3 Reimbursable expenses and/or a Lump Sum Expense may include the following:

- .1** Long distance telecommunications expenses, postage, and agency approved special delivery services (e.g., Federal Express, Express Mail, UPS, etc.).
- .2** Travel from the A/E's office to the Project site (or Agency).
- .3** Travel for the interest of the project for programming purposes and investigative design purposes.
- .4** Defined in-house printing depending on the complexity of the project as negotiated by the Agency and the A/E.
- .5** Overtime work expense requiring higher than regular rates, if authorized at the time of negotiations by the agency.
- .6** Renderings, models and mock-ups requested by the agency.
- .7** Additional insurance coverage or limits, including professional liability insurance, requested by the agency in excess of the minimum coverage or limits required to be carried by the A/E in Article 12, paragraphs 12.6 and 12.7, when requested by the Agency.
- .8** Fees and costs paid by the A/E to obtain permits required by authorities having jurisdiction over the project.

10.3 PAYMENTS FOR BASIC SERVICES

10.3.1 Payments for Basic Services shall be made in proportion to services performed within each phase of service as established in Subparagraph 11.1.2.

10.3.2 When the A/E's initial compensation under this Agreement is based on a Percentage of Construction Cost, and after construction contract award, this Agreement shall be converted to a lump sum fee equal to the percentage times the Construction Contract Award amount, using the SE-260, "Professional Services Contract Amendment Request".

10.3.3 When compensation is based on a Percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for non-constructed portions of the Project shall be payable to the extent services are performed, in accordance with the schedule set forth in Subparagraph 11.1.2, based on:

- .1** the lowest bona fide bid;
- .2** the final negotiated amount; or,
- .3** the most recent approved Agency Construction Budget for such portions of the Project, if a bid is not received.

10.3.4 If the contract time for Final Completion established in the Construction Contract is exceeded by more than thirty (30) days through no fault of the A/E, compensation for Basic Services performed by principals, employees and professional consultants required to complete the administration of the Construction Contract beyond the 30th day shall be in accordance with Paragraph 11.2.

10.3.5 If a Construction Change Order or Change Directive is generated:

- .1** in response to a request from the Agency, including Agency-approved suggestions from the A/E or the Contractor, then the A/E's cost of generating and processing the request shall be paid either in accordance with Paragraph 11.2, or based on the percentage of construction cost, as determined by the Agency.
- .2** in response to a request from the Contractor that is ultimately rejected by the Agency, then the A/E's cost of evaluating and processing the request shall be paid in accordance with Paragraph 11.2 and shall be the responsibility of the Contractor.
- .3** in response to a proposal from the A/E to correct an error and/or omission on the part of the A/E, then the required documentation shall be generated and processed at no additional cost to the Agency in accordance with Subparagraph 10.1.7.

10.4 PAYMENTS FOR ADDITIONAL SERVICES

10.4.1 Payments for Additional Services included in this Contract shall be made in proportion to services performed and expenses incurred.

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10.4.2 Additional compensation shall not be allowed for any services of the A/E in connection with:

- .1** Basic Services described in Article 2;
- .2** The Contractor's Warranty Period Inspection;
- .3** Contract administration during the extension of the Construction Contract time caused by the A/E;
- .4** Contract administration during the first thirty (30) days of the extension of the Construction Contract Time not caused by the A/E; or
- .5** Correction of errors or omissions by the A/E.

10.5 PAYMENTS FOR REIMBURSABLE EXPENSES

10.5.1 Payments for Reimbursable Expenses shall be in full for the expenditures during the period for the Pay Request.

10.5.2 The A/E shall submit documentation including receipts, invoices and other substantiating data with the Payment Request.

10.7 PAYMENTS FOR LUMP SUM EXPENSES

10.7.1 Payments for Lump Sum Expenses shall be as agreed upon during the negotiations for the expenses (monthly, quarterly, at the completion of each phase, or at time of completion of multiple phases of the services provided).

10.7.2 The A/E is not required to include in the invoicing receipts or other documentation to substantiate the lump sum expenses at the time of each billing.

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ARTICLE 11 BASIS OF COMPENSATION

Delete Article 11 in its entirety and substitute the following:

ARTICLE 11 BASIS OF COMPENSATION

11.1 COMPENSATION FOR BASIC SERVICES

11.1.1 Compensation for Basic Services as described in Article 2 shall be as follows (See Chapter 4 of the Manual): *(Check box for the method of compensation to be used and insert the stipulated sum or percentage.)*

Agency Construction Budget, including Construction Contingency: _____

☐

Stipulated Lump Sum of: _____

or

☐

Percentage of Construction Contract Award _____

Initial Basis of Compensation for Basic Services: _____

(Percent times Budget)

11.1.2 Progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable: *(See Chapter 4 of the Manual for suggested phase percentages).*

Schematic Design (percent): _____

Design Development (percent): _____

Construction Documents (percent): _____

Bidding and Award (percent): _____

Construction Administration (percent): _____

Project Closeout (percent): _____

(as defined in Chapter 7, paragraphs 7.24, 7.25 & 7.26 of the OSE Manual)

Total Basic Compensation _____

11.2 COMPENSATION FOR ADDITIONAL SERVICES

11.2.1 For additional services of the A/E to be included in this Contract, compensation shall be as follows: *(Insert or attach lump sum fee or hourly rates for Principals and employees, and identify Principals and classify employees.)*

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11.2.2 Description of Additional Services. *(Reference attachments if necessary.)*

11.2.3 For Additional Services of Consultants, use a multiple of _____ times the amounts billed to the A/E for such services.
(Insert multiple not to exceed 1.1)

- .1** It is understood and agreed by the parties to this Agreement that the multiple listed in this Subparagraph shall be considered to include all costs of the A/E relating to the provision of the additional services of consultants, including, but not limited to, field and office supervision, general overhead allocations and profit.

11.3 PROJECT EXPENSES

11.3.1 For **REIMBURSABLE EXPENSES**, as described in Article 10 and listed in Article 12, use a multiple of _____ times the expenses incurred by the A/E in the interest of the Project.
(Insert multiple not to exceed 1.1)

- .1** Total reimbursable expenses shall not exceed: _____
(Insert maximum dollar amount)
- .2** Description of Reimbursable Expenses not included in Paragraph 10.2.3.
(Reference attachments if necessary.)

11.3.2 For a **LUMP SUM EXPENSE**, as described in Article 10 and listed in Article 12 use the total LUMP SUM EXPENSE not to exceed: _____

- .1** A Lump Sum Expense shall be paid on a basis of (monthly, quarterly, completion of phase, time of completion): _____
- .2** Description of the expenses included in the Lump Sum Expense not included in Paragraph 10.2.3.
(Reference attachments if necessary.)

ARTICLE 12 - OTHER CONDITIONS OR SERVICES AIA B151-1997

11.4 ADDITIONAL PROVISIONS

11.4.1 Projects that are delayed or extended beyond the Agency and A/E agreed upon time schedule may have the rates set forth for Additional Services adjusted pursuant to negotiations between the agency and A/E.

ARTICLE 12 OTHER CONDITIONS OR SERVICES (continued)

12.2 Contract Schedule and Time Limitations. *(Reference attachments if necessary)*

12.3 List of Consultants by Discipline and Name of Person or Firm as presented to the Selection Committee. *(Attach a Project Organizational Chart for the Project Team)*

12.4 List the key Project Team Members assigned to this Project by Name, Discipline and Name of Person or Firm. *(Reference attachments if necessary.)*

ARTICLE 12 - OTHER CONDITIONS OR SERVICES AIA B151-1997

12.8 List attachments to this Contract not previously referenced, if any.

12.9 DEFINITIONS

12.9.1 ARCHITECT/ENGINEER OR ARCHITECT. A person or firm who performs professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture and interior design pertaining to construction, as defined by the SC Code of Laws, as amended, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals and other related services.

- .1** Wherever the word "A/E" or "Architect" appears in the Contract between the Agency and the A/E, or herein, the intent is the Architect/Engineer with whom the Agency has a contractual agreement.
- .2** The architectural, civil, structural, mechanical, electrical and other engineering portions of the Project shall be planned and designed by or under the immediate supervision of a South Carolina licensed architects or engineers who have the requisite expertise in the particular discipline involved.

12.9.2 CONSULTANT. A person or firm contracted by or in partnership with the A/E at any tier to fulfill the terms and conditions of this Contract.

12.9.3 MANUAL. The "Manual for Planning and Execution of State Permanent Improvements - Part II" as published by the Office of State Engineer (OSE). The A/E shall be thoroughly familiar with the Manual and shall perform tasks and activities required by the Contract in accordance with the requirements and standards stated therein as appropriate to the project.

- .1** If the A/E believes that a Building Code, Manual requirement or other regulation is unclear as to meaning, the A/E shall request a written determination of the interpretation, applicable to the Project only, from the OSE or the appropriate regulatory agency having jurisdiction, and the A/E shall be entitled to rely on the written opinion, if any, it receives.

12.9.4 CONSTRUCTION CONTRACT AWARD. The amount of the contract between the Agency and the Contractor for this project.

12.9.5 ESTIMATE OF CONSTRUCTION COST. The Estimate of Construction Cost is the estimated Construction Contract Award amount for all elements of the Project designed or specified by the A/E, adjusted to reflect local conditions at the time of bidding and the anticipated period of construction.

12.9.6 CONSTRUCTION BUDGET. The current Estimate of Construction Cost plus that portion of the Agency's total project contingency reserved for the construction of the Project.

12.9.7 AGENCY. Wherever the word "Owner" or "Agency" appears in the B151 or herein, the intent is the State Agency with whom the A/E has a contractual agreement.

12.9.8 GENERAL CONDITIONS. The AIA document A201-1997 "General Conditions of the Construction Contract," and the "Standard Supplemental Conditions" (00811-OSE) as published by the Office of State Engineer, or other documents of similar function and intent as may be approved by the Office of State Engineer for use on specific projects.

The undersigned certifies that the A/E listed below will provide a "Drug-Free Workplace" as that term is defined in §44-107-30 of the SC Code of Laws by complying with the requirements set forth in Title 44, Chapter 107; and the A/E agrees to this **Article 12, Other Conditions or Services**, as published by the OSE. Any exceptions or changes approved by the Agency and the OSE shall be fully delineated in an Article 13 and attached hereto.

(Title of Certifier)

(Date Certified)